

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF DARK AIR)
CORPORATION FOR AUTHORITY TO PROVIDE)
RESOLD AND FACILITIES-BASED LOCAL EXCHANGE) ORDER
TELECOMMUNICATIONS SERVICES THROUGHOUT)
NEW JERSEY)

DOCKET NO. TE02010032

(SERVICE LIST ATTACHED)

BY THE BOARD:

Pursuant to N. J. S. A. 48:2-1 et seq. and Section 253 of the federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and by letter dated January 15, 2002, Dark Air Corporation ("Petitioner" or "Company") filed a Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide resold and facilities-based local exchange telecommunications services throughout the State of New Jersey. Petitioner requests confidential treatment of the financial information in Exhibit 3 & 4 of its Petition.¹

Dark Air Corporation is a corporation initially organized as Cyber Office Parks.Com, Inc. (Cyber) under the laws of the State of Delaware. Later, Cyber filed a Certificate of Amendment to change its corporate legal name to Equal Access Networks, Inc. (Equal). Finally, Equal filed a Certificate of Amendment to change its legal name to Dark Air Corporation. The Company is a wholly owned subsidiary of New England Digital Distribution. Petitioner's principal offices are located at 10-I Commerce Way, Woburn, Massachusetts 01801.

Petitioner has submitted copies of its Amended Certificate of Incorporation from the State of Delaware and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. According to the Petition, the Company was formed to provide resold and facilities-based local exchange telecommunications services throughout New Jersey. Petitioner states that it is currently operating as a facilities-based competitive local exchange carrier in the State of Rhode Island and certification is pending in the State of Massachusetts and New Hampshire. The Company also is in the process of applying for authority in several additional northeastern states. Petitioner states that it has not been denied authority to provide telecommunications services in any state and has not had its authority to provide telecommunications service revoked in any state. The Petitioner has not had any civil or criminal proceedings brought against it, or settled any such proceedings, in any jurisdiction. According to the Petition, the Company is in the process of establishing a Level 3/Verizon interconnection agreement and will file a copy of the interconnection agreement with the Board upon its completion.

¹ Pursuant to the Open Public Records Act N.J.S.A. 47:1A-1. et seq., and by letter from the Secretary, Petitioner has been notified that the Board shall handle such requests for confidential treatment in accordance with the Board's proposed regulations at N.J.A.C. 14:1-12, et seq.

In its Petition, the Company seeks authority to provide resold and facilities-based local exchange telecommunications services to large business consumers and alternate carriers within the State of New Jersey. The company will offer single and multiple Optical Carrier Level 3 (high speed) private line circuits between individual or multiple points via dark fiber from the Dark Air point of presence. The Company's facilities will be located at the Verizon central office and access tandem facilities located within New Jersey. Since service is installed on demand, the exact location of facilities cannot be predicted at this time. The Petitioner also states that other than the plans to install the initial central office and access tandem equipment, the Company has no present plans to build, locate or acquire additional facilities at this time. The Company intends to provide its service in the same exchange boundaries as the incumbent local exchange carriers. According to the Petition, within the next year, the Company intends to obtain certification to provide the requested services in the northeastern region, and in five years intends to expand into other regions. Pursuant to the docket # TT02010033, Petitioner has filed initial local exchange and exchange access tariffs for the Board's approval.

Petitioner requests a waiver of N. J. S. A. 48:3-7.8(a) and N. J. A. C. 14:1-4.3 which require that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts (USOA), respectively. In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in Woburn, Massachusetts. Petitioner also states, upon written notice from the Board, it will provide its books and records within forty-eight hours, at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, the Company states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the professional biographies of its key personnel who, according to the Company, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

Petitioner states it is a privately held corporation and maintains that its financial information is confidential and will therefore be submitted under seal.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et. seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N. J. S. A. 48:2-21.16(a)(4); N. J. S. A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed the Company's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner has demonstrated it possesses the requisite financial, technical and managerial resources which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide resold and facilities-based local exchange telecommunications services throughout New Jersey subject to approval of its tariff and submission of financial statements. The Board also FINDS that in accordance with N. J. S. A. 48:2-59 and 48:2-60 and N. J. S. A. 52:27E-61 and 52:27E-62, the Petitioner is subject to an annual assessment by both the Board and Division of Ratepayer Advocate, respectively. The Board notes that the Petitioner will not be permitted to provide telecommunications services until a tariff is approved by the Board and the required financial statements i.e. balance sheet, income statement, statement of change in cash flow and statement of change in equity, have been provided.

The Board HEREBY ORDERS that:

- 1) Pursuant to N. J. S. A. 48:2-16.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year.
- 2) Pursuant to N. J. S. A. 48:2-59 and 48:2-60, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

On or before February 1st of each year, the Petitioner will receive from the Division of Audits, an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the company's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form is due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintain its books and records in accordance with USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

DATED: 03/24/03

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

JEANNE M. FOX
PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

(SIGNED)

CONNIE O. HUGHES
COMMISSIONER

(SIGNED)

JACK ALTER
COMMISSIONER

ATTEST:

(SIGNED)
KRISTI IZZO
SECRETARY